

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA
Plaintiff,

v.

Case No. 12-CR-256

MARGARITO GARCIA-FRAGOSO
Defendant.

ORDER

Defendant Margarito Garcia-Fragoso pleaded guilty to possession of 500+ grams of cocaine with intent to distribute, 21 U.S.C. § 841(a)(1) & (b)(1)(B), and possession of a firearm in furtherance of a drug trafficking offense, 18 U.S.C. § 924(c). At his May 6, 2014 sentencing hearing, I adopted the guideline calculations in the PSR: base offense level 28 based on a drug weight of 2-3.5 kg of cocaine, U.S.S.G. § 2D1.1(c)(6) (2013), minus 3 levels for acceptance of responsibility, U.S.S.G. § 3E1.1, for a final level of 25; criminal history category IV; and an imprisonment range of 84-105 months on the drug count. The firearm count carried a mandatory 60-month consecutive term. See U.S.S.G. § 2K2.4. On consideration of the factors under 18 U.S.C. § 3553(a), I imposed a sentence of 66 months on the drug count and 60 months consecutive on the firearm count for a total sentence of 126 months.

Defendant now seeks relief under guideline Amendment 782. That Amendment, which went into effect on November 1, 2014, generally reduces offense levels in drug trafficking cases by 2, and the Sentencing Commission has designated it for retroactive application. See U.S.S.G. § 1B1.10(d) (2014). Therefore, defendants may rely on Amendment 782 to obtain sentence modifications under 18 U.S.C. § 3582(c)(2), which allows the court to reduce a

sentence that was based on a guideline range subsequently lowered by the Commission.

In defendant's case, application of Amendment 782 produces a new base offense level of 26 on the drug count, U.S.S.G. § 2D1.1(c)(7) (2014), reducing the range on that count to 70-87 months. Defendant's existing term of 66 months on the drug count is already below that range, and U.S.S.G. § 1B1.10(b)(2)(A) forbids the court (except in cases of substantial assistance) from reducing the sentence to less than the minimum of the amended guideline range.¹

THEREFORE, IT IS ORDERED that defendant's motion (R. 80) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 6th day of July, 2015.

/s Lynn Adelman
LYNN ADELMAN
District Judge

¹Defendant also seeks appointed counsel. Pursuant to the court's administrative order, Federal Defender Services reviewed the case and declined to file anything on defendant's behalf.